

REMARKS

Reconsideration is respectfully requested.

The applicants have reviewed the Examiner's comments and the cited references and responsive thereto applicants have amend claims 1, 5, 8, 12, 21, 24 and 28, and have canceled claims 2 and 3. The applicants have also corrected errors in claims 7, 17, 21[[and 31]].

Claims 1, 5, 8, 12, 21, 24 and 28 were rejected by the Examiner under 35 U.S.C. 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention. Responsive thereto, the applicants have replaced the word "opening" with the word "aperture" in claim 1, and have inserted the words "load bearing" in front of the word "member" in claims 1, 5, 8, 12, 21, 24 and 28 to distinguish this member from the other "members", e.g., support member.

The drawings were objected to by the Examiner under 37 CFR 1.83(a) for failing to show the "bucket" claimed by the applicants. However, applicants respectfully submit that the implement 119 shown in applicants Fig. 1 is specifically called out in applicants specification as a "clamshell bucket" (see applicants specification, page 4, lines 6-9). Applicants respectfully request that the drawing objection now be removed and the drawings allowed.

The Examiner has rejected claims 1-11, 13-27 and 29-35 under 35 U.S.C. 102(b) as being anticipated by Walth et al. (US 6,158,949). Responsive thereto, applicants have amended claim 1 to more fully differentiate applicants claimed invention from the teachings of Walth. Specifically, applicants have amended claim 1 by including the limitation that the support member has an opening sized to receive a bearing which is neither taught nor suggested by Walth. In contrast, the structure in Walth that the Examiner makes reference to is a bearing (56) that is attached only to the coupling support structures (26,30). For at least the reasons presented above, applicants respectfully submit that Walth does not and cannot teach the applicants invention as now claimed and that the rejection of claim 1 (with existing claims 4-14 dependent thereon) be withdrawn.

With regards to claims 4 and 20, the Examiner's states that the added limitation of "laser welding", as it relates to the attachment of the support members, adds no

disagree
webster
definition
to support
the weight
or pressure
of (bear)

structure to the claims which the applicants presume is the basis of the rejection. However, applicants respectfully submit that rejecting these claims based on that assertion is erroneous. The Federal Circuit clearly has held that a patent applicant is free to recite features of an apparatus either structurally or functionally, and that functional limitations may be used to define an element by one of its characteristics or qualities (see, e.g., *In re Schreiber*, 128 F.3d 1473, 44 USPQ2d 1429 (Fed. Cir. 1997)). The applicants further submit that in order for the Examiner to assert that this feature is an inherently taught characteristic of work machines, the Examiner is first required to provide a basis in fact and/or technical reasoning to reasonably support the determination that the alleged inherent characteristic necessarily flows from the teachings of the applied art, which the Examiner has failed to do (see, e.g., MPEP § 2112). For at least the reasons presented above, applicants respectfully submit that Walth fails to teach applicants invention as claimed and that this rejection be withdrawn.

Regarding claims 9-11 and 25-27, the Examiner states that Walth teaches a reinforcing structure (42) attached to at least one of the side plates (20,21), however, with reference to col. 3, lines 32-39 of Walth, the reinforcing structure (42) is actually attached to the coupling support structure 30 and to the top and bottom boom support structures (16, 18) and not to the side plate as claimed by the applicants. Furthermore, applicants are not clear how or where Walth teaches applicants claimed orientation of the reinforcing structure found in applicants claims 10 and 26. For at least the reasons presented above, applicants respectfully submit that Walth fails to teach applicants invention as claimed and that this rejection be withdrawn.

Regarding independent claim 15 (with claims 16-30 dependent thereon), applicants incorporate by reference applicants discussion above regarding claim 4 and respectfully again submit that, in light of the Federal Circuit's holding that a patent applicant is free to recite features of an apparatus either structurally or functionally, and that functional limitations may be used to define an element by one of its characteristics or qualities, the recitation by the applicants of the characteristics of the pieces in the manner claimed is proper and that the rejection of these claims is respectfully requested to be withdrawn.

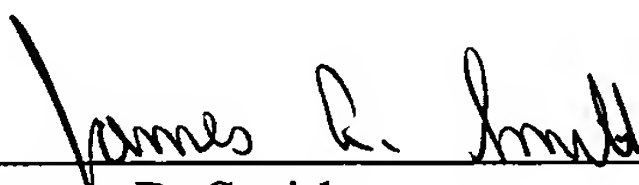
Regarding independent claim 31 (with claims 32-35 dependent thereon), applicants comments made immediately above concerning claim 15 are again directly

applicable and applicants respectfully submit that characterizing the weldment as being simulated for the effects of heat on at least one of the pieces is a proper manner to make this claimed characterization which is neither taught nor suggested by Walth. For at least the reasons presented above, applicants respectfully request that the rejection of claim 31 (with claims 32-35 dependent thereon) be withdrawn.

The Examiner has rejected claims 12 and 28 under 35 U.S.C. 103(a) as being unpatentable over Walth in view of Ginn et al. (US 6,409,459). However, applicants respectfully submit that the combination of Walth and Ginn still fails to teach an arrangement in which "at least two adjacent side plates on one of said first side or said second side are coupled together such that said centerline axis of each said side plate are colinear", as claimed by the applicants. Although the Examiner references figure 7 of Ginn to support the rejection, neither figure 7 itself nor the corresponding description in the specification of figure 7 teach or suggest the above claimed limitation. For at least the reasons presented above, applicants respectfully submit that the combination of Walth and Ginn does not and cannot teach applicants invention as claimed and that the rejection of claims 12 and 28 be withdrawn.

It is respectfully urged that the subject application is in condition for allowance and allowance of the application at issue is respectfully requested.

Respectfully submitted,



James R. Smith
Registration No.: 41,318
Caterpillar Inc.

Telephone: (309) 636-1569
Facsimile: (309) 675-1236
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